

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 DEVONTE B. HARRIS,

Case No. 1:21-cv-00818-ADA-CDB (PC)

12 Plaintiff,

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CLAIMS AND DEFENDANTS**

13 v.

14 D. ARDEN, et al.,

14-DAY DEADLINE

15 Defendants.

17 Plaintiff Devonte B. Harris is a state prisoner proceeding *pro se* in this civil rights action
18 brought pursuant to 42 U.S.C. § 1983.

19 On November 7, 2022, the Court screened Plaintiff's first amended complaint and found
20 that it states cognizable claims of excessive force against Defendants Arden, Gamboa, Garcia,
21 Pasillas and Perez, and of retaliation against Defendants Arden, Gamboa, Garcia and Pasillas.
22 (Doc. 11.) The Court therefore directed Plaintiff to file a second amended complaint curing the
23 deficiencies in his pleading or to notify the Court that he wishes to proceed only on the claims
24 found cognizable. (*Id.* at 12.)

25 On November 22, 2022, Plaintiff filed a notice that he elects "to proceed on the claims
26 [the Court] found cognizable in the first screening order." (Doc. 12.) Accordingly, and for the
27 reasons set forth in the Court's screening order (Doc. 11), the Court RECOMMENDS that:

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- 1 1. Defendants M. Boersma and Ken Clark be DISMISSED; and,
- 2 2. The claims in Plaintiff's first amended complaint be DISMISSED, except for its
- 3 claims of excessive force against Defendants Arden, Gamboa, Garcia, Pasillas and
- 4 Perez, and retaliation against Defendants Arden, Gamboa, Garcia and Pasillas,
- 5 pursuant to 42 U.S.C. § 1983.

6 These Findings and Recommendations will be submitted to the United States District
7 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). Within 14 days of the date of
8 service of these Findings and Recommendations, Plaintiff may file written objections with the
9 Court. The document should be captioned, "Objections to Magistrate Judge's Findings and
10 Recommendations." Failure to file objections within the specified time may result in waiver of
11 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
12 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

13 IT IS SO ORDERED.

14 Dated: December 1, 2022



UNITED STATES MAGISTRATE JUDGE

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